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C O N F I D E N T I A L SECTION 01 OF 03 ABUJA 001386

SIPDIS

E.O. 12958: 08/14/11

TAGS: [BEXP](#) [ECPS](#) [ETRD](#) [PGOV](#) [NI](#)

SUBJECT: CODEM PROVIDES FURTHER INDICATIONS OF POSSIBLE CORRUPTION HINDERING ITS BID FOR \$35 MILLION CONTRACT

REF: ABUJA 1357

Classified by Charge Rick L. Roberts. Reasons 1.5 (b) and (d).

1. (C) Summary. On August 12 CODEM's Nigeria-based representative gave us further documentation that suggests that the Ministry of Communications is grossly understating the bid of CODEM's competitor for the \$35 million contract mentioned in refTel. From the Ministry's understatement, as well as from Rhodes & Schwartz/Ferrostaal's own acknowledgment of the situation, we conclude that both are engaging in irregular business practices that encourage corruption. While we plan to make one further demarche in CODEM's behalf, this time on the Secretary of the Federal Government; we would welcome guidance from EB and the DOC/Advocacy Center within the next few days. End summary.

#### Background

2. (U) The easiest way to understand what is going is by going back a bit into the history of bids offered by CODEM and its German competitor. Document "Phase 11, Opening of Bid documents on IRME, Ministry of Communications, Friday, 16th November 2001," initialed by various officials, shows that Kabtel comm. Ltd./CODEM's initial bid price was \$39,352,041. Ferrostaal/Rhode & Schwarz's was E29,862,332. This was in fall 2001.

3. (U) On February 8, 2002, the Ministry of Communications requested the bidders to submit their final discounts, as well as financing modalities (MC/ST/0247/1/147).

4. (U) On March 14, 2002, CODEM offered a final \$5,000,000 discount. Ferrostaal merely responded that its "final discount be subject of the [illegible word] of contract financial proposal buyers credit." These terms appear in the annotated document, "Result of the Final Discounted Figure of Companies for the International Radio Monitoring Equipment System (IRMS) and National Spectrum Management System (NSMS), Thursday, 14th March, 2002, Ministry of Communications."

5. (U) The document dated March 14, which is in the file CODEM passed to us, is followed by another three-page document that offered an interpretation of the bidders' financial proposals. This document confirmed CODEM's final discount and recognized that its bid was then \$34,352,041. The document further indicated that CODEM's terms were such that "it will be a great advantage to consider the loan." On the other hand, it noted that Ferrostaal's proposed financing required a "firm commitment to commence arrangement or financial package from the three banks." The document's recommendation read as follows: "Having considered the submissions of all the companies and analyzing their financing terms, the proposal given Kabtel Communications Limited [CODEM] is more elaborate and it clearly defined the terms and conditions of the loan. It is therefore recommended that the price offer of \$34,352,041 (offshore) and N184,225,000 (on-shore) by the company could be considered. However, the company should be asked to give a further discount on its price considering the impact of cost of financing on the total contract cost as analyzed in table 2."

6. (U) The table that follows this document indicates that the loan(s) that Ferrostaal may have been trying to arrange were from 100 to 350 basis points above

that offered by CODEM (7.5 vice 4.0625 Libor). Ferrostaal's "fees and levies" were also more onerous (8-10 percent vice 7.0-7.75 percent). Another table that follows, Financial Implications of Proposals Calculated on Straight-Line Basis and Period of Tenor, is specific with respect to CODEM, but indicates that the cost of interest in the loan(s) to be arranged by Ferrostaal were "not determinable as tenor is not stated." The total cost of its financing package therefore was "not determinable." Whereas CODEM stated a profit margin of 6.5 percent, Ferrostaal's margin was "not stated." This was the situation in spring 2002.

#### Recent Developments

17. (C) Although the last table mentioned immediately above indicates that the cost of Ferrostaal's financing was "not determinable" as of spring 2002, a document originating at the Presidency (PRES/81/36-1/93, June 24, 2003) indicates that the cost of financing proposed by Ferrostaal was only \$1,511,927.24 as opposed to CODEM's approximate \$15,000,000. We cannot explain how the Presidency arrived at the figure associated with Ferrostaal, for as mentioned in para 9 below, as of early May 2003, Ferrostaal probably still had not arranged a financial package. Although the document of the Presidency refers to the last table mentioned above, the Presidency's document clearly has incorrect financing charges for Ferrostaal, for the loan that it proposed was for E24,302,882.55 at interest ranging from 5.1 to 7.0 percent for possibly five years. The difference in dollars between the financing cost that the Presidency mentioned and that that would result if Ferrostaal's terms were respected is far too large to overlook. Ferrostaal's true financing cost at least equals and probably exceeds CODEM's. Since Ferrostaal quoted in euros, it also likely that the cost of its overall financial package exceeds CODEM's offer.

18. (C) The Presidency's June 2003 document further notes that Ferrostaal's offer excludes customs duties and other clearing charges that total \$7,024,893.04. This point is particularly revealing. In an undated memorandum given to us by CODEM's representative on August 12 and probably drafted this month in response to our last demarche, it is noted in the section on pricing that "CODEM did not offer to take care of clearing and forwarding of the equipment. In fact, they added a special clause which reads: 'Total quoted prices are restrictively understood as CIF, Lagos. Please be advised that there is no provision for CUSTOM DUTIES. The Ministry of Communication shall take the appropriate action to exempt the said commodities..' It is not understood how this quoted condition would save \$7.5 million for the Ministry if CODEM won the contract."

19. (C) In its consideration of "optional funding," the group that produced the undated memo quoted above (Re Grave Irregularities on International Radio Monitoring Stations (IRMS) and National Spectrum Management System (NSMS), Project for the Federal Ministry of Communications) restated the figure of \$30,103,530.24 as being Ferrostaal's final price, and noted that "the difference is too wide [in its favor] to ignore." But as noted in para seven above, that figure grossly understates Ferrostaal's financing charge. Moreover, this memo overlooks a critical acknowledgement that Ferrostaal made on May 8, 2003. In a letter of that date to President Obasanjo, the Managing Director of Rhodes & Schwarz Ferrostaal apparently wrote that "We would wish for the Ministry to inform us of our achievement." He went on that "even if it is stated in their [the Ministry of Communications'] letter that 'financing is yet to be put in place. And that implementation will be subject to financing being available.' A (sic) least we and the Ministry would then have a common goal and work jointly to finding a way to finance the project." This letter to Obasanjo was forwarded to the Ministry of Communications by the Presidency on May 23 (PRES/93), four days before the former Minister of Communications recommended that the contract be awarded to Ferrostaal (noted in para 3 of reftel).

10. (C) The penultimate and last paragraphs of the most recent memo suggest that our demarches in behalf of CODEM have had and may continue to have little effect. Despite Ferrostaal's questionable reputation,

as noted in reftel, the memo notes that "Suffice it to say that CODEM does not have as good a past record as some of the others. If the American government patronizes CODEM, it may not necessarily follow that the Nigerian government must do the same irrespective of the manner in which the company bided (sic). In conclusion, it is important to state that the entire process of bidding and evaluation was as transparent and unbiased as it could possibly have been. All bidders were given equal opportunities on a level playing ground. The bid chosen by the Ministry was by any standard the best under the circumstances of the bidding process."

11. (U) Comment. The irregularities mentioned above and those indicated in reftel suggest that some people in the federal government are engaged in corrupt practices. We would welcome guidance from EB and DOC/AC with respect to our future demarche.

Roberts